



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF

September 11, 2003

BY FAX AND REGULAR MAIL

Mr. Bruce White
Karaganis, White & Magel
414 North Orleans Street
Suite 810
Chicago, Illinois 60610

Re: Ellsworth Industrial Park, Downers Grove, Illinois
Order No. V-W-03-C-751

EPA Region 5 Records Ctr.



265632

Dear Mr. White:

The United States Environmental Protection Agency ("U.S. EPA") has received the proposed "Agreement Among the Village of Downers Grove, DuPage County and Certain Participating Companies" (the "Agreement") submitted under Paragraph 14.c of Order No. V-W-03-C-751 entered by U.S. EPA on August 8, 2003 (the "Order"). As provided by Paragraphs 14 and 15, U.S. EPA (in consultation with Illinois EPA) approves the Agreement with the modifications described below.

The Agreement states that residents to be hooked up to public drinking water will be asked to sign a consent form "substantially similar" to an attached form of water service agreement. Paragraph 11 of that form water service agreement read:

The Owner(s) on behalf of all owners and occupants of the Property, waives and releases the Village, the County of DuPage, and each of the participating companies providing funding for the water connection, from all claims pertaining to any such connection and/or groundwater contamination or condition, if any, except for any potential common law claim regarding personal (bodily) injury or property damage.

U.S. EPA understands that these initial terms were negotiated by the parties to the Agreement, and agrees with the need for the Village and County to obtain such waivers because they are responsible for the administration and implementation of the hookup project. U.S. EPA is concerned, however, that the language could be read to require residents as a condition of hookup to give up rights against the potentially responsible parties ("PRPs") far beyond any rights that are already limited or contemplated by the Order. The Citizens Advisory Group has told U.S. EPA that it shares this concern and that a significant number of residents will be unwilling

to sign a consent form including such a broad waiver of rights.

During the course of negotiations, U.S. EPA and Illinois EPA have consistently told the PRPs that the form of release the PRPs sought from homeowners in connection with the hookups must *not be an impediment to hookups*. Even if not intended, the broad waiver language above can be read to extend far beyond the scope of any releases fairly contemplated under the Order and under the Agreement in Principle signed by the PRPs.

U.S. EPA believes it is fair and consistent with the overall agreement for the hookups that the residents can be asked to waive some rights, such as their rights for most claims related to the connection and for interim relief during the period after the hookup process began and before hookups are completed.

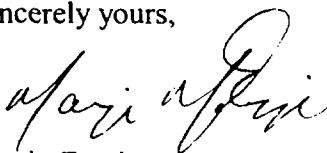
U.S. EPA therefore as a part of, and as a condition of, its approval modifies the language in the water service agreement to read:

The Owner(s) on behalf of all owners and occupants of the Property, waives and releases the Village, the County of DuPage, and each of the participating companies providing funding for the water connection, from all claims pertaining to any such connection and/or groundwater contamination or condition, if any, except for any potential claims: (a) regarding personal (bodily) injury or property damage; (b) seeking recovery of the \$2000 Village connection charge; or (c) seeking recovery of costs incurred by the Owner(s) prior to August 15, 2003.

Finally, it is U.S. EPA's understanding that the Village of Downers Grove and DuPage County now intend to divide the provisions of the form of water service agreement attached to the Agreement between two separate documents (with one of those documents including the former paragraph 11 as modified above). U.S. EPA understands that as so revised these final agreements will still be "substantially similar" to the original form and so will not require re-execution of the main Agreement document. U.S. EPA expects to work with the Village of Downers Grove and DuPage County to encourage residents to sign these final water service agreements as quickly as possible to expedite the process of hooking them up to the public water supply.

U.S. EPA therefore requires, under Paragraph 14.d of the Order, that the PRP Group finalize the Agreement, including the modified water service agreement documents, no later than 10 business days from your receipt of this letter.

Sincerely yours,



Mazin Enwiya
Remedial Project Manager